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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-214255

DATE: July 30, 1984

MATTER OF: Lawrence R. Lyons -- Relocation Expenses --
Loan Assumption Fee

DIGEST:

Employee transferred to a new duty station effective July 5, 1983, and, upon purchasing a residence, he incurred a loan assumption fee. Paragraph 2-6.2d(1) of the Federal Travel Regulations, as amended effective October 1, 1982, permits reimbursement of loan origination fee and similar fees and charges, but not items which are considered to be finance charges. Loan assumption fee may be reimbursed where it is assessed instead of a loan origination fee, and involves charges for services similar to those covered by a loan origination fee.

ISSUE

The issue in this decision involves the claim of an employee for reimbursement of a loan assumption fee which he paid in connection with a transfer to a new duty station. Since the Federal Travel Regulations now permit reimbursement of loan origination fees and other fees or charges that are similar in nature, we hold that the employee may be reimbursed for a loan assumption fee which was similar in nature to and was charged instead of a loan origination fee.

BACKGROUND

This decision is in response to a request from Walter H. Parker, Jr., a certifying officer with the George C. Marshall Space Flight Center, National Aeronautics and Space Administration (NASA), concerning the claim of Mr. Lawrence R. Lyons, a NASA employee.

Mr. Lyons was transferred from Boulder, Colorado, to Huntsville, Alabama, effective July 5, 1983. In connection with the transfer he purchased a residence in Huntsville on July 1, 1983. Mr. Lyons assumed the existing mortgage of \$149,754.46 on the residence, and he was charged an

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assumption fee or loan transfer fee of \$2,965.43 which represents approximately two percent of the balance of the loan.

The agency denied the claim for the loan assumption fee on the basis that it is a finance charge under the Truth in Lending Act, Title I, Public Law 90-321, May 29, 1968, 82 Stat. 146, as amended, 15 U.S.C. §§ 1601-1667 (1982), as implemented by Regulation Z, 12 C.F.R. § 226.4 (1983), and therefore is not reimbursable under the applicable regulations governing relocation expenses. Mr. Lyons claims that this fee is the same as a loan origination fee which is now reimbursable under the applicable regulations.

OPINION

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1982) and the implementing regulations, the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), an employee may be reimbursed for certain real estate expenses incurred when he transfers to a new duty station. Paragraph 2-6.2d of the FTR lists various miscellaneous expenses related to the real estate transactions which may be reimbursed.

Our decisions have previously held that a loan origination fee constituted a finance charge under Regulation Z and could not be reimbursed under para. 2-6.2d unless the fee was broken into specific charges which were excluded from the definition of a finance charge. Stanley Keer, B-203630, March 9, 1982. The same principle applied to loan assumption fees. Dean E. Taylor, B-184626, February 12, 1976; Joseph Ralph Hogan, B-208339, April 22, 1983.

However, in Robert E. Kigerl, B-211304, July 12, 1983, 62 Comp. Gen. 534, we noted that the General Services Administration (GSA) had amended the Federal Travel Regulations, through GSA Bulletin FPMR A-40, Supplement 4, August 23, 1982, effective October 1, 1982, to specifically authorize reimbursement for loan origination fees as follows:

"d. Miscellaneous expenses.

"(1) Reimbursable items. The expenses listed below are reimbursable in connection with the sale and/or purchase of

a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station or by the purchaser of a residence at the new official station to the extent they do not exceed amounts customarily paid in the locality of the residence.

- "(a) FHA or VA fee for the loan application;
- "(b) Loan origination fee;
- "(c) Cost of preparing credit reports;
- "(d) Mortgage and transfer taxes;
- "(e) State revenue stamps;
- "(f) Other fees and charges similar in nature to those listed above, unless specifically prohibited in (2), below;

* * * * *

"(2) Nonreimbursable items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable.

* * * * *

- "(e) No fee, cost charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and Regulation Z issued in accordance with Pub. L. 90-321 by the Board of Governors of the Federal Reserve System, unless specifically authorized in (1), above; * * *." Emphasis added.

We held in Kigerl that, although a loan origination fee may constitute a finance charge within the meaning of Regulation Z, GSA has now authorized reimbursement under

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FTR para. 2-6.2d, quoted above, for transfers effective on or after October 1, 1982. We concluded that this amendment was consistent with the authorizing legislation and would be followed by this Office. See also Patricia A. Grablin, B-211310, October 4, 1983.

The question presented in this case by Mr. Lyons is whether he may be reimbursed for a loan assumption fee which he incurred when he assumed an existing loan rather than taking out a new loan on his house purchase.

In Edward W. Aitkin, B-214101, May 7, 1984, 63 Comp. Gen. ____, we noted that FTR para. 2-6.2d(1)(f) allows reimbursement of "other fees and charges similar in nature" to those listed in para. 2-6.2d(1)(a-e) unless specifically prohibited in para. 2-6.2d(2). Although a loan assumption fee may be characterized as a finance charge, we concluded in Aitkin that a loan assumption fee is reimbursable under FTR para. 2-6.2d(1)(f) as a fee or charge similar in nature to a loan origination fee. We stated that the intent of para. 2-6.2d(1)(f) is to permit reimbursement of fees which are similar to those listed in paragraph 2-6.2d(1)(a-e) and which are charged instead of one of the enumerated fees. Accordingly, we held that where a loan assumption fee involves similar charges and fees to those covered by a loan origination fee and where the loan assumption fee is assessed instead of a loan origination fee, it may be reimbursed under FTR para. 2-6.2d(1) as a miscellaneous expense.

Therefore, Mr. Lyons' claim may be paid consistent with the limitations contained in the FTR.

for Milton J. Aroslan
Comptroller General
of the United States